

Application Number 10/057,574
Amendment dated October 11, 2005
Responsive to Office Action mailed July 8, 2005

REMARKS

This amendment is responsive to the Office Action dated July 8, 2005. Applicants have amended claims 1, 10, 11, 17, 22, 23, 26, 29, 33, 34, 39, 41, 42 and 45. Applicants have cancelled claims 9, 43 and 44. Accordingly, claims 1-8, 10-42 and 45 are pending.

As a preliminary matter, Applicants acknowledge that the Examiner requested a new Abstract that is "more aptly descriptive of the invention claimed." In the Office Action, the Examiner stated that Applicants' Abstract included no description of any improvement in monitoring and testing of computer networks by the agents and the replay modules. However, Applicants are not required to set forth improvements in the Abstract, but merely a brief description of the invention. As stated in MPEP 608.01(b), "The purpose of the abstract is to enable the United States Patent and Trademark Office and the public generally to determine quickly from a cursory inspection the nature and gist of the technical disclosure." Applicants' Abstract as filed clearly describes the invention as claimed.

Claim Rejection Under 35 U.S.C. § 112

In the Office Action, the Examiner rejected claims 1-45 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants respectfully traverse the rejection. The Examiner stated that Applicants' claims recite no meaningful operation to be performed by the agents in response to the information received. However, Applicants' claims clearly recite that the agents introduce the network packets on the computing network in response to the issued commands.

In addition, the Examiner asserted that no meaningful improvement or result is seen from the claims, and that it is not clear in what order the steps of the method claims are executed. Applicants are not required to recite an improvement or result in the claims. Furthermore, Applicants are not required to explicitly describe an order in which steps of a method could occur. Applicants submit that claims 1-45 particularly point out and distinctly claim the subject matter, as required by 35 U.S.C. 112, second paragraph. Applicants request withdrawal of the rejection.

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Claim Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 1-45 under 35 U.S.C. 103(a) as being unpatentable over Schwaller et al. (U.S. Patent No. 6,625,648). Applicants respectfully traverse the rejection to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicants' claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

As a preliminary matter, Applicants acknowledge that the Examiner rejected independent claims 1, 21, 29, 32 and 39 over Schwaller et al. However, the Examiner merely applied an assessment of the features of claim 1 to each of Applicants' independent claims without consideration of the individual features of the other independent claims. The Examiner failed to consider, or even mention, several patentably distinct features of Applicants' independent claims. Therefore, the Examiner has not established a prima facie case of obviousness for each of Applicants' claims.

For example, the Examiner never discussed the features of Applicants' independent claims 21 and 32. Specifically, the Examiner has not established that Schwaller et al., or any other prior art reference of record, discloses replay data that defines a conditional flow for introduction of portions of the replay data by respective agents coupled to a computing network, as recited by Applicants' claim 21. Furthermore, the Examiner has not established that Schwaller et al., or any other prior art reference of records, discloses a replay module that issues commands to the agents according to the conditional flow, as recited by Applicants' claim 32.

With reference to independent claims 1, 29 and 39, as amended, the applied reference lacks any teaching that would have suggested capturing network packets from a computing network using a plurality of agents coupled to the computing network, selecting portions of the captured network data for use as replay data, communicating the replay data to the agents coupled to the computing network, wherein the replay data includes one or more network packets, and issuing commands to the agents to control introduction of the network packets on the computing network by the agents.

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In support of the rejection, the Examiner asserted that, Schwaller et al. teaches each and every feature of Applicants' independent claims. However, the Examiner recognized that Schwaller et al. does not disclose replay data. The Examiner stated that no patentable weight is given to the data labeled as replay because there is no replay operation recited in the claims. The Examiner further stated that it would have been obvious to a person skilled in the art to give a label to the data in accordance with the purported use of the data so as to differentiate the data from other data.

Contrary to the Examiner's assertion, replay data is not merely labeled data. Instead, as specifically recited by Applicant's amended claims, the replay data is generated by selecting portions of network data that has been captured from the computing network by the network agents. The agents may then introduce the replay data (i.e., selected portions of the captured data) into the computing network for testing purposes. For example, the portions of the network data may be selected as replay data based on observed feedback from the computing network in reaction to the original network data. In this way, the agents may "replay" the selected network packets in order to reproduce the previously observed feedback. For purposes of clarification, Applicants' have amended claims 1, 29 and 39 to more clearly define the term "replay data."

Applicants' claims 1, 29 and 39 now recite capturing network packets from a computing network using a plurality of agents coupled to the computing network and selecting portions of the captured network data for use as replay data. In addition, Applicants' further amended claim 39 to recite aggregating the captured network packets, presenting the aggregated network packets to a user, and selecting portions of the aggregated network packets to use as replay data based on input from the user. Support for the additional features is included in Applicants' specification, as well as Applicants' dependent claims 9, 43 and 44, now cancelled.

Schwaller et al. fails to teach or suggest replay data as defined by Applicants' amended claims 1, 29 and 39. Instead, Schwaller et al. merely describes network communication test protocols that are based on a type of application communication traffic expected to provide a test protocol which *simulates* application communication traffic between associated endpoint nodes.¹ Schwaller et al. makes no mention of capturing actual network packets from the computing

¹ Schwaller et al., Col. 7, ll. 23-44.

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network and selecting portions of the captured network data for use as replay data, as recited by Applicants' claims 1, 29 and 39. In fact, Schwaller et al. provides no further explanation as to how the test protocols supplied to the endpoint nodes are created.

Similarly, Schwaller et al. fails to teach or suggest each and every feature of Applicants' dependent claims 2-20, 30-31 and 40-45. For example, claim 2 recites generating a set of triggers, wherein each trigger defines one or more conditions, communicating the triggers to the agents, receiving signals from the agents based on the conditions of the triggers, and issuing the commands to the agents in response to the signals. Schwaller et al. fails to teach or suggest a set of triggers that define conditions and issuing commands to the agents in response to signals based on the triggers. Schwaller et al. merely describes defining a test schedule including a test protocol for the connections to simulate communications traffic between a plurality of selected endpoint nodes. Schwaller et al. makes no mention of the test schedule or the test protocol changing based on defined conditions.

In the Office Action, the Examiner asserted that Schwaller et al. teaches the features of Applicants' dependent claims 11-16 because the console node of Schwaller et al. collects test results. However, Applicants' claims 11-16 refer to generating the replay data and not to the collection of test results. For example, Applicants' claim 11, recites communicating the captured network data to an aggregator, aggregating the captured network packets into sets of network packets based on source information and destination information for the network packets, presenting the aggregated network packets to a user, and selecting the portions of the aggregated network packets to use as the replay data based on input from the user. As described above, Schwaller et al. fails to describe replay data selected from captured network data. Furthermore, Schwaller et al. fails to teach aggregation of captured network data for user selection of portions of the aggregated data as replay data.

The Examiner further asserted that Schwaller et al. teaches the features of Applicants' dependent claims 17-20 because different types of tests are input by the user of the console node in Schwaller et al. Again it appears that the Examiner has misinterpreted the scope of Applicants' claims. Applicants' claims 17-20 refer to modification of the replay data, i.e., the captured data that is selected and introduced (replayed) into the computing network. For example, Applicants' claim 17 recites modifying the replay data, and communicating the

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modified replay data to agents for introduction into the network. Schwaller et al. does not teach replay data as claimed and, moreover, does not teach modifying the replay data for introduction to the computing network by the agents.

With reference to independent claims 21 and 32, the applied reference lacks any teaching that would have suggested storing replay data that includes network packets and that defines a conditional flow for introduction of portions of the replay data by respective agents coupled to a computing network, communicating portions of the replay data to the respective agents, and issuing commands to the agents to control introduction of the network packets on the computing network by the agents. As described above, the Examiner failed to consider the features of claims 21 and 32 and instead relied on the arguments set forth in regard to Applicants' independent claim 1.

Regardless, Schwaller et al. fails to teach or suggest replay data that defines a conditional flow for introduction of portions of the replay data by the agents. Applicants' claimed invention allows the introduction of certain replay data based on specific feedback received from the computing network according to the conditional flow. In other words, the agents may perform a certain action when a condition specified in the conditional flow is fulfilled. In this way, the conditional flow may cause the agents to perform several different tests on the computing network depending on which conditions are fulfilled.

On the contrary, Schwaller et al. describes defining a test schedule including a test protocol for the connections to simulate communications traffic between a plurality of selected endpoint nodes. Schwaller et al. describes the test schedule as being based on a calendar cycle to provide a start time for initiating execution of the test protocol and a repeat schedule for re-initiating execution of the test protocol.² The test schedule and the test protocol do not change regardless of the feedback received from the computing network, and cannot be considered a conditional flow. Schwaller et al. similarly fails to teach or suggest each and every feature of Applicants' dependent claims 22-28 and 33-38.

It is well established that the Examiner bears the burden of establishing a prima facie case of obviousness.³ In doing so, the Examiner must determine whether the prior art provides a

² Schwaller et al., Col. 7, ln. 60-Col 8, ln. 2.

³ In re Oetiker, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992).

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"teaching or suggestion to one of ordinary skill in the art to make the changes that would produce" the claimed invention.⁴ A prima facie case of obviousness is established only when this burden is met. Schwaller et al. does not include any teaching that would have suggested introducing replay data on the computing network, wherein the replay data is selected from network packets captured from the computing network by the agents. Furthermore, Schwaller et al. does not suggest introducing replay data on the computing network by the agents in accordance with a conditional flow.

For at least these reasons, the Examiner has failed to establish a prima facie case for non-patentability of Applicants' claims 1-45 under 35 U.S.C. 103(a). Withdrawal of this rejection is requested.

CONCLUSION

All claims in this application are in condition for allowance. Applicants respectfully request reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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⁴ *In re Chu*, 36 USPQ2d 1089, 1094 (Fed. Cir. 1995).